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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 MJ 8150 (WHP)

5 LUIS DIAZ, JR., and LUIS  
6 JAVIER DIAZ,

7 Defendants.

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8 New York, N.Y.  
9 February 6, 2017  
10 4:00 p.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

JENNIFER L. GACHIRI

18 Assistant United States Attorney

19 VINCENT FLYNN, ESQ.

Attorney for Defendant Diaz Jr.

20 GEORGE VILLA, ESQ.

21 JOSE QUINON, ESQ.

Attorneys for Defendant Diaz

H266diaa

(In open court; case called)

THE LAW CLERK: Appearances by the Government.

MS. GACHIRI: Jennifer Gachiri for the government.

THE COURT: Good afternoon, Ms. Gachiri.

THE LAW CLERK: For defendants.

MR. VILLA: Good afternoon, your Honor. George Villa and Vincent Flynn for Luis Diaz, Jr., who is before the Court.

THE COURT: Good afternoon to you, Mr. Flynn.

MR. QUINON: Good afternoon, your Honor. Jose Quinon on behalf of Luis Javier Diaz, who is present before the Court.

THE COURT: I note the presence of both defendants at counsel table. This matter is on for an initial appearance before the Court.

Let me begin with an arraignment. I would ask Luis Diaz, Jr., to stand.

Are you the defendant Luis Diaz, Jr.?

DEFENDANT DIAZ, JR.: Yes, I am sir.

THE COURT: Have you seen a copy of the indictment in this case?

DEFENDANT DIAZ, JR.: Yes, I have.

THE COURT: Have you discussed it with your attorney?

DEFENDANT DIAZ, JR.: Yes, we have.

THE COURT: Do you waive my reading of the indictment word for word here in open court?

DEFENDANT DIAZ, JR.: Yes.

H266diaa

1 THE COURT: How do you plead to the charges by the  
2 United States against you in the indictment, guilty or not  
3 guilty?

4 DEFENDANT DIAZ, JR.: Not guilty.

5 THE COURT: Very well, sir. You may be seated.

6 Luis Javier Diaz, would you stand.

7 Are you the defendant, Luis Javier Diaz

8 DEFENDANT DIAZ: Yes.

9 THE COURT: Have you seen a copy of the indictment in  
10 this case?

11 DEFENDANT DIAZ: Yes.

12 THE COURT: Have you discussed it with your attorney?

13 DEFENDANT DIAZ: Yes.

14 THE COURT: Do you waive my reading the indictment  
15 word for word here in open court?

16 DEFENDANT DIAZ: Yes.

17 THE COURT: How do you plead to the charges by the  
18 United States against you in the indictment, guilty or not  
19 guilty?

20 DEFENDANT DIAZ: Not guilty.

21 THE COURT: Very well. You may be seated.

22 So, Ms. Gachiri, what is the nature of the charges  
23 against the defendant and what discovery does the government  
24 have to provide to their counsel?

25 MS. GACHIRI: So this case involves the operation of

H266diaa

1 an unlicensed money transmitting business. The defendants  
2 controlled a company in Doral, Florida known as Miami Equipment  
3 that would generate false and fraudulent paperwork in order to  
4 mask its movement of money from individuals and entities  
5 outside the United States to bank accounts that were located in  
6 the United States and elsewhere. The company was not licensed  
7 as required by the State of Florida or with fin-syn, which  
8 allowed it to escape certain requirements such as filing CTRs  
9 and SARS. The defendants are also charged with a money  
10 laundering conspiracy and international money laundering.

11 The discovery in this case consists primarily of 46  
12 boxes that were seized from the defendants' businesses pursuant  
13 to a search warrant. Those boxes were returned to the  
14 defendants prior to charging. There are certain items of  
15 outstanding discovery which --

16 THE COURT: I am sorry. Did you say those boxes were  
17 returned?

18 MS. GACHIRI: That's correct. Prior to charging.  
19 That is the vast bulk of discovery. There are certain --

20 THE COURT: I assume the government made copies?

21 MS. GACHIRI: Yes, your Honor.

22 THE COURT: All right.

23 MS. GACHIRI: There are certain outstanding items of  
24 discovery that the government can produce within a week,  
25 including search warrant affidavits, bank records and e-mails

H266diaa

1 that were seized pursuant to a search warrant. There were  
2 other items of outstanding discovery that the government can  
3 produce within 30 days, including export and visa records. So  
4 the government's proposal would be to produce that discovery  
5 within 30 days to allow the defense time to review that  
6 discovery and then return here in 60 days to report back to the  
7 Court.

8 THE COURT: Are there any statements by either of the  
9 defendants in custody?

10 MS. GACHIRI: I will report back to the Court on that  
11 point. If there are, if statements were made in connection  
12 with their rest on December 20th, the government will produce  
13 those.

14 THE COURT: Those should be produced forthwith if they  
15 exist.

16 MS. GACHIRI: Will do, your Honor.

17 THE COURT: Does the government anticipate any  
18 superseder here?

19 MS. GACHIRI: Not at this stage, your Honor.

20 THE COURT: Assuming this case were to go to trial,  
21 what does the government estimate the length of its case to be?

22 MS. GACHIRI: The outer bound would be two weeks, your  
23 Honor, but likely closer to one.

24 THE COURT: Thank you very much, Ms. Gachiri.

25 Who wishes to be heard on behalf of the defendants?

H266diaa

1 MR. VILLA: Your Honor, George Villa.

2 What we got from the government were not the actual  
3 boxes. What the government did is they made copies of the  
4 documents in the boxes into a CD and those CDs were provided to  
5 us. Now, we've been able to open most of them, but we do have  
6 some problems with some of the other CDs.

7 THE COURT: Is there one CD per box?

8 MR. VILLA: I am not sure, your Honor. Everything was  
9 copied and I think they provided maybe three or four CDs. I  
10 know we were able to open two of them, but we had issues and  
11 are still having issues with the other two CDs.

12 THE COURT: Can you give me some sense of how many  
13 documents we are talking about that are in these 46 boxes or on  
14 these four CDs?

15 Anyone? Perhaps the government would be in the best  
16 position to know.

17 MS. GACHIRI: I am not in a position to estimate the  
18 number of gigabytes, your Honor, but it is a significant amount  
19 of material.

20 MR. VILLA: Judge, it's a lot. Because it consists of  
21 documents that were generated by the business. It's also  
22 documents of bank records, documents by the banks, and so  
23 forth. So we're talking a lot. It also includes e-mails that  
24 the defendants wrote from their company. So we're talking  
25 about a lot of documents.

H266diaa

1 MS. GACHIRI: I would add that it includes debit  
2 confirmations and invoices.

3 MR. QUINON: Your Honor, Jose Quinon on behalf of Luis  
4 Javier Diaz.

5 I came into the case a little bit later than other  
6 counsel. I have not received yet any of those CDs. I look  
7 forward to receiving them. I can tell you that I think it is  
8 going to be -- going through discovery will require time and  
9 resources on behalf of the defendant for the following reasons:  
10 The business is not -- I heard the recitation of counsel for  
11 the government. The business was an ongoing business that has  
12 been in business for a long time. It is the sale of heavy  
13 equipment business that has been in place for a long time, run  
14 by the family. Additional family members work in this business  
15 and have worked for a lot of years. As part of their services  
16 to clients, there were some monies that had been transmitted.  
17 So there is going to be issues in relation to this case when we  
18 go through the discovery what is the history with the different  
19 clients and how many pieces of equipment they sold in the past.

20 It's going to get very tedious in terms of discovery  
21 and we're going to have to go through all those boxes because  
22 there are bank records as well. So this really turns out to be  
23 a case that is going to take some doing financially to find out  
24 the movement of money of different transactions and that takes  
25 time to do that. It is forensic work that is tedious but

H266diaa

1 necessary to do in a case like this, but I just wanted to bring  
2 that to your attention, sir.

3 THE COURT: I am going to adopt the government's  
4 schedule for discovery because I think it's a reasonable one,  
5 that within seven days the government will produce the search  
6 warrant applications and the other materials that were  
7 described by counsel. Certainly I think the government should  
8 confer immediately with defense counsel to find out what the  
9 problem is with accessing the information on some of these CDs.  
10 You should get copies of the CDs to Mr. Quinon for his review.

11 With respect to the export and visa records, I think  
12 you said that they could be produced within 30 days?

13 MS. GACHIRI: That's correct, your Honor.

14 THE COURT: Where do those records come from? Are  
15 they records of an agency of the government?

16 MS. GACHIRI: My understanding is that certain of the  
17 records will be from CBP. It is my understanding certain of  
18 the records will be from that agency but that we can produce  
19 them all within 30 days.

20 THE COURT: So assuming then that all of this material  
21 is produced by the government by March 6th, how much time would  
22 the defendants like to review that information in order to  
23 determine what motions, if any, the defendants want to make?

24 MR. QUINON: Judge, possibly 60 days and the reason  
25 for that is going to be like I said before it is going to be

H266diaa

1 complex of all the transactions. So 60 days would be what we  
2 would ask for.

3 THE COURT: Look, I will put it down for a conference  
4 on April 28th. Is that sufficient? It's not quite 60 days  
5 but...

6 MR. QUINON: That will do, Judge.

7 THE COURT: At that time what I would anticipate or  
8 what the parties should anticipate is that you should be in a  
9 position to tell me what motions, if any, you want to make  
10 prior to trial. I will set a briefing schedule for those  
11 motions and I will select a trial date in the case.

12 In the meantime, if there is any issue that arises  
13 regarding discovery, please communicate with me by letter  
14 because I am putting it over for a significant period of time  
15 and when we all get together on April 28th, I don't want to  
16 hear that somebody couldn't open a CD or that somehow despite  
17 the government's best efforts the export and visa records still  
18 haven't been fully produced. So if 30 days from now there is  
19 not complete compliance with the government's production, I  
20 want to be alerted to it so that we can move this case forward.

21 I take it both defendants reside in the Southern  
22 District of Florida?

23 MR. QUINON: Yes, your Honor.

24 THE COURT: I have just reviewed some supplemental  
25 reports from Pretrial Services and I had a question. At least

H266diaa

1 one of the defendants holds two passports, one from Spain and  
2 one from the United States. Have both defendants surrendered  
3 all their passports?

4 MR. VILLA: Yes, your Honor, except for the one from  
5 Spain. That will be surrendered tomorrow as soon as we get  
6 back.

7 THE COURT: It will be surrendered to pretrial down in  
8 Florida?

9 MR. VILLA: Yes. I think that is probably the easiest  
10 way to do it. The U.S. passports have been surrendered and we  
11 have the receipts for those.

12 THE COURT: Are there any other issues that counsel  
13 want to raise this afternoon?

14 MR. QUINON: Just the issue with an oral motion to be  
15 admitted pro hac vice and then we'll follow up through the ECF.

16 THE COURT: Of course. I heard you today and of  
17 course it will be my pleasure to grant the application. I  
18 grant the applications for today, but you'll file the  
19 appropriate applications with the Clerk's Office and join the  
20 bar of the mother court as some legal cognoscente refer to it.

21 MR. VILLA: That will be for Mr. Flynn and myself as  
22 well.

23 THE COURT: Very well. You can simply submit those  
24 pro hac vice applications then on the docket. I guess the  
25 criminal docket was just opened. It's bereft of useful

H266diaa

1 information for me at the moment, but I am confident the clerks  
2 will catch up in the Clerk's Office with the entries.

3 Anything further?

4 MS. GACHIRI: The government moves for the exclusion  
5 of time between now and April 28th.

6 THE COURT: Yes. What are the defendants' respective  
7 views concerning the exclusion of time between now and  
8 April 28th, 2017?

9 MR. QUINON: We have no objection your Honor.

10 MR. VILLA: No objection, your Honor.

11 THE COURT: Since this continuance is due to the  
12 government's need to provide the voluminous discovery to the  
13 defendants and the defendants' need to review all of that  
14 discovery in order to determine what motions, if any, they wish  
15 to make, I perspectivevely exclude the time from today until  
16 April 28th, 2017 from Speedy Trial Act calculations. I find  
17 that this continuance serves to ensure the effective assistance  
18 of counsel and prevents any miscarriage of justice.  
19 Additionally, I find that the ends of justice served by such a  
20 continuance outweigh the best interest of the public and each  
21 of these defendants in a speedy trial pursuant to 18, U.S.C.,  
22 Section 3161.

23 By the way, I will set this matter down on April 28th  
24 at 2:30 in the afternoon.

25 Will that be convenient for counsel?

H266diaa

1 MR. QUINON: Yes, sir. That's works.

2 THE COURT: I understand that you are all traveling  
3 from Florida.

4 MR. QUINON: Yes, your Honor.

5 THE COURT: So I am prepared to put it down at any  
6 particular time that you want that is most convenient so that  
7 you can minimize your travel dislocations.

8 MR. QUINON: I think that is going to work out. This  
9 morning we woke up at 3:30 in the morning. At my age I can't  
10 do that too many times.

11 THE COURT: That's the point. So --

12 MR. QUINON: 2:30, Judge.

13 THE COURT: 2:30 is fine?

14 MR. QUINON: Yes.

15 MR. VILLA: Yes, Judge.

16 THE COURT: Thank you all for coming in.

17 MR. VILLA: Thank you, your Honor.

18 MR. QUINON: Thank you.

19 MR. FLYNN: Thank you.

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